Delay in The Superior Courts of North Carolina and an Assessment of Its Causes

ADMINISTRATIVE OFFICE OF THE COURTS
RALEIGH, NORTH CAROLINA
1973

Delay in The Superior Courts of North Carolina and an Assessment of Its Causes

J. Oliver Williams
Associate Professor of Politics,
North Carolina State University

Richard J. Richardson
Professor of Political Science
University of North Carolina at Chapel Hill

December, 1973

TABLE OF CONTENTS

LIST OF TABLES

FOREWORD

This study was conducted for the Administrative Office of the Courts, The Judicial Department of the State of North Carolina. Partial funding was obtained from the North Carolina Committee on Law and Order through a grant from the Law Enforcement Assistance Administration of the U. S. Department of Justice.

Field work and analysis was undertaken in the summer of 1972 and 1973. The analysis is based on a sample of cases filed in the courts during 1971. The 1971 docket was studied in order to allow a sufficient proportion of cases to complete the court cycle.

Professors Oliver Williams and Richard J. Richardson of N. C. State University and the University of North Carolina at Chapel Hill, respectively, are principal investigators of the study and authors of this report. Mr. Taylor McMillan served as project director for the Administrative Office of the Courts.

The field work was conducted by Mr. James D. Beckwith, a student at the University of Chicago School of Law; and Mr. Larry Bowman and Mr. Beverly Beale, students at Wake Forest Law School.

Chapter I

Introduction

Delay in the disposition of criminal cases and the resulting congestion that occurs in trial court dockets has generated widespread interest in recent years. Frequent concern has been expressed by the legal community that many defendants do not receive prompt justice and that delay and congestion in the courts contribute to practices that affect both the quality and speed of justice and undermine public confidence in the courts.

In some states, legislatures have responded by providing more judges, solicitors, public defenders and other court personnel to deal with increasing dockets. Ten states, additionally, have enacted statutes to insure criminal defendants of the right to a speedy trial. These statutes usually provide for trial within a specified length of time after arrest or the right to have charges dismissed.

The extent to which North Carolina courts suffer from delay has not been assessed systematically. Most Superior Courts in the State have experienced an increase in caseloads in recent years, and some counties have had extraordinary increases. The Superior Court criminal caseload has increased by 5,897 cases during the past five years. During this same period approximately 2,000 cases each year have been added to dockets in excess of cases disposed of, and the number of pending cases at the end of the calendar year has increased from 11,903 pending cases in 1967 to 18,907 in 1971[1].

The number of pending cases at the end of a calendar year does not reflect a "true" backlog since many cases which are pending at the end of a calendar year were filed in the last weeks of the year and can be expected to be disposed of in the first months of the next year. Yet the amount of pending cases—which represents a 39 percent increase in the past five years—is an indication of increasing congestion and backlog in state courts.

Recognizing that delay is a problem in North Carolina courts, the State Criminal Revision Code Commission included as part of a legislative package in 1973 a policy related to promptness of

[1] Annual Reports, Administrative Office of the Courts.

trial in criminal cases.[2] The prompt trial policy suggested by the code commission authorizes judges to order immediate trials under certain conditions and permits defendants to petition for immediate trial. Judges are authorized to order a defendant's prompt trial, within thirty days, in cases where defendants have been confined awaiting trial for a period greater than sixty days or awaiting trial on bail for a period greater than ninety days. Defendants can petition for a speedy trial when confined awaiting trial for thirty days or when awaiting trial while on bail for periods exceeding sixty days. This legislation was not acted upon in the 1973 session of the General Assembly.

In response to the growing concern over delay and congestion in North Carolina criminal courts, a study was undertaken, in cooperation with the Administrative Office of the Courts, in an attempt to determine the extent of delay in the litigation of criminal cases in Superior Courts. This report includes the results of that study which was conducted during the summer and fall of 1972.

Using scientific sampling procedures, the records of over 2,000 cases filed in the calendar year of 1971 were examined to determine the average length of time involved in processing typical criminal cases in Superior Courts. (The 1971 docket was studied in order to obtain data on completed cases). Both overall elapsed time from arrest to sentence and the amount of time consumed in various stages of the court process are described in this report. The statistical comparisons used should be useful in determining the effect and impact of "speedy trial" standards in the State and in comparing the relative speed or delay of litigation in North Carolina with national standards. In addition, the report includes an assessment and study of backlog and pending cases problems in Superior Courts.

A full discussion of the sampling procedures, methods by which the study was conducted and a description of the cases and counties studied are included in an appendix.

[2] "Act to Amend the Laws Relating to Pre-trial Criminal Procedures." (This bill was introduced but not enacted by the 1973 session of the General Assembly of North Carolina).

Chapter II

Delay in State Courts: A Legal and Social Problem

The problem of delay in criminal prosecution has implications for the legal rights of the defendant as well as consequences for the administration of justice. The Sixth Amendment of the Constitution of the United States provides for the right to a "speedy and public trial" in all criminal prosecutions, and the U. S. Supreme Court, in a North Carolina case,[1] has held that the Sixth Amendment right is applicable to the states by way of the Fourteenth Amendment. Yet, many defense attorneys contend that it is the exceptional defendant that wants a speedy trial. One academy of trial lawyers in the State has as its motto, "A case not tried is a case not lost."

Although willing to adjudicate "speedy trial" cases on an *ad hoc* basis, the Supreme Court of the United States has refused to legislate absolute standards to define *per se* what constitutes a violation of the Sixth Amendment guarantee. In *Barker* vs. *Wingo* (1972),[2] speaking for a unanimous court, Justice Powell wrote:

> We find no constitutional basis for holding that the speedy trial right can be quantified into specified number of days or months. The states, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise.

Thus, the Court expressly declined to follow either the example of the rules of the District Court for the United States Court of

[1] In *Klopfer v. North Carolina* the United States Supreme Court wrote concerning the North Carolina procedure of "*nolle prosequi* with leave": "Even though taking of *nolle prosequi* had the effect of permitting the defendant to go whithersoever he would, he was not thereby relieved of limitations placed upon his life and liberty by prosecution; and his constitutional right to speedy trial was denied by discretion vested in the solicitor to hold him subject to trial over his objection, throughout unlimited period during which the solicitor could restore case to calendar but during which there was no means by which defendant could obtain dismissal or have the case restored to calendar for trial." Thus the North Carolina procedure was held to constitute a denial of the right to a speedy trial. (386 U.S. 213).

[2] 40 *Law Week* 4843.

Appeals for the Second Circuit or that of the proposals of the American Bar Association. Rather, the U. S. Supreme Court retained a standard of flexibility but left concrete standards as an available avenue for the states.

In the absence of binding federal standards, state courts and legislatures have responded differently to the problems of delay. North Carolina courts have been hesitant to dismiss cases on the defendant's argument that there was unconstitutional delay. The Supreme Court of North Carolina ruled on the question of speedy trials in *State v. Johnson* (1969).[3] In an opinion by Justice Sharp, some guidelines were offered by the court to assist in deciding when a case should be dismissed for unusual delay. Thus,

> When there has been an atypical delay in issuing a warrant or in securing an indictment and the defendant shows (1) that the prosecution deliberately and unnecessarily caused the delay for the convenience or supposed advantage of the state and (2) that the length of the delay created a reasonable possibility of prejudice, defendant has been denied his right to a speedy trial and the prosecution must be dismissed.

In line with this opinion, it would appear that the Court will proceed on an *ad hoc* basis from case to case to determine where prejudice exists. Justice Sharp cited four factors to be considered in determining whether the defendant has been denied his constitutional right to a speedy trial: (1) length of delay (2) cause of delay (3) waiver by the defendant and (4) prejudice to the defendant.

In a call for more concrete standards, the American Bar Association in *Standards Relating to Speedy Trial*[4] recommended that:

> A defendant's right to speedy trial should be expressed by rule or statute in terms of days or months running from a specified event. Certain periods of necessary delay should be excluded in computing the time for trial, and these should be especially identified by rule or statute insofar as is practicable.

The ABA did not attempt to quantify a standard of days or months which, if exceeded without cause, would constitute denial of a speedy trial. The report noted that "[t]his kind of judgement

---

[3] 275 N.C. 264.

[4] American Bar Association, *Standards Relating to a Speedy Trial* (ABA, 1967).

must be made in each jurisdiction based upon the conditions which prevail there."

Several state legislatures have responded with specific guidelines, by adopting statutes which specify certain time limitations for trial. Among such statutes are those of Wisconsin, Illinois, California, Iowa, Massachusetts, Rhode Island, Nevada, Pennsylvania, and New York.[5] In addition, federal legislation has been introduced in both houses of Congress to insure speedy trials in federal cases.[6]

Since the President's Commission on Crime and the Administration of Justice studies in 1967, the emphasis on delay problems in courts has shifted from legal rights of the defendant to social effects of delay on the administration of justice.

The President's Commission, in fact, concentrated more on the effects of delay on courts than on defendants and pointed out that delay diminishes the deterrent effect of courts in the eyes of potential offenders, undermines public confidence in the system and casts doubt on the commitment of the judicial system to upholding standards of proper social conduct.

The Commission's report stated:

> The courts inability to handle their volume of cases has many deleterious effects. Most criminal cases are disposed of by dismissal or by plea of guilty. Dismissals often result from the prosecutor's desire to keep his caseload down to a more manageable size and from the loss of evidence due to the reluctance of witnesses to appear. Defendants often manipulate the system to obtain sentencing concessions in return for guilty pleas. Conversely defendants unable to secure pretrial release on bail are under heavy pressure to plead guilty and begin serving their terms promptly.[7]

Measurement of the conformity of state courts with speedy trial standards could be a matter of examining applicable state law or

---

[5] See Wisconsin (W.S.A. 967:10 (1969); Illinois (Illinois Revised Statutes. c 38 of 103-5a (1965); California (California Penal Code 1382); Iowa (Iowa Code Ann. 795.1, 795.2 (1966 Supplement); Massachusetts (Mass. Ann. Laws, c.277 of 72 (1956); Rhode Island (R.I. Gen. Law. Ann., 12-13-6 (1956); Nevada (Nev. Rev. Stat. 178.556 (1967); Pennsylvania (Pa. Stat. Ann. Title 19, 781 (1964); Washington (Wash. Rev. Code 10.37.020).

[6] See 92nd Congress, First Session, S.895 and H.R. 6045 and 7107.

[7] "Task Force Report: The Courts," President's Commission on Crime and the Administration of Justice (Washington: U.S. Government Printing Office, 1967, p. 80.

measuring the performance of North Carolina courts with other standards, such as those established by the American Bar Association, the President's Commission on Crime and the Administration of Justice, or other states' statutes. The North Carolina law applicable to speedy trials, at present, is rather limited. The district attorney controls the calendar in this State.[8] With respect to setting specific time limitations, other than the right to a speedy trial provided by the Sixth Amendment to the U. S. Constitution and the court interpretation of the application of this right, G.S. 15-10 (last amended in 1913) provides that a person charged with a felony and held in detention who is not indicted and tried within two "terms" of court must be released from detention; however, "the judge presiding may, in his discretion, refuse to discharge [i.e., release from detention] such person if the time between the first and second terms of the court be less than four months." Note that such a person can be prosecuted further; the statute merely frees him from detention. G.S. 15-175 (last amended 1965) requires the entering of a "nolle prosequi 'with leave' " for a defendant untried and unapprehended after two "terms of court," unless the "judge for good cause shown shall order otherwise." This also does not bar further prosecution.

Except for questioning solicitors on these and other policies such as the ABA's standard with respect to scheduling priority for jail cases, this report does not attempt to document compliance or non-compliance with applicable statutes concerning speedy trial. Even as a general policy, these laws do not provide any *measurable* requirement regarding *normal* or *acceptable* delay that exists or could be expected to exist in various cases and court jurisdictions. As a result, we have applied other standards—principally measurement of the age of backlog and pending cases and time elapsed during stages of the court process for litigated cases—in assessing the extent and severity of delay in North Carolina courts.

[8] N.C.G.S. 7A-61, 1971. The title of solicitor was changed to district attorney by the 1973 session of the General Assembly. See SL 1973, chp. 47.

Chapter III

Backlog and Pending Cases

Backlog, or cases awaiting trial for an unusually long period of time, is an important component of delay in a court system. In fact, delay in most courts is generally equated with the size of the backlog and pending docket.

Several problems, arise, however, when delay is defined only in terms of unprocessed cases. Such a definition of backlog inflates the extent of delay and at the same time only partially measures the effectiveness of the courts in handling the volume of business which comes into the judicial system. It inflates the picture of delay by including a sizeable proportion of relatively young cases which were filed near the end of the reporting period. In addition, such backlog reporting indicates little about the time required for processing cases which might have been completed during the course of the reporting period. Cases filed early in the year may suffer as much real delay in processing, while never becoming a part of the backlog, as cases which are pending at the end of the reporting period. Finally, to simply report pending cases at the end of a year as backlog, does not enable us to distinguish between delay in the courts and those cases which are simply a result of an increase in court business.

When is a "Backlog" a Backlog?

In order to clarify these problems, it is important to establish criteria to determine when a pending case can be considered part of a backlog.

There is no easy method for defining a "backlogged case." By some measures it is any case not processed in regular order with other cases or a case which remains inactive during several terms of court. In North Carolina, backlog has generally been equated with all cases pending at the end of reporting periods (especially end-of-year reports). Annually since 1960 this has amounted to upwards of 10,000 cases in the Superior Courts and reached 18,907 at the end of 1971.

This large number of cases pending at the end of a calendar year includes many cases which cannot be considered a true backlog. In

reporting the volume of pending cases, the Administrative Office of the Courts has been careful not to consider the pending caseload as a true measure of the extent of backlog; however pending cases are used frequently to depict a large backlog problem in the State.

To give a more realistic assessment of backlogs as a measure of cases which have not been disposed of in regular order, and to separate those cases which can be considered a "true" backlog from pending cases at the end of calendar year, two components of the backlog problem are analyzed in this report:

Backlog cases have been defined as aged cases which have been inactive through an entire year of court terms. Thus, "backlog" will be viewed in all counties as only those aging cases which have been continued through at least two court terms.

Pending cases are defined as those which were filed during the calendar year but had not been processed by the end of the year.

Extent of Backlog in Superior Courts

In the 30 counties included in this study, there were 1,398 cases filed in years prior to 1971 in which no action, other than motions for continuance, had taken place during the year. This figure represents a complete inventory of cases filed prior to the year 1971. These cases might be considered the "true" backlog of aged cases in these Superior Courts.

Although a definition of backlog which includes only cases pending for over a year's period of time is a restricted accounting of the backlog problem, it is probably a more realistic assessment of backlog than one which includes all current year cases which are pending at the end of the year.

This backlog of cases represents 5.9 percent of the yearly case load for these counties.

On the basis of sampling, it would be fairly accurate to project a figure of from six to ten percent of current yearly caseloads as the minimum size of the backlog of aged cases in North Carolina Superior Courts. Using this estimate, the backlog of old cases existing during 1971 in the one hundred Superior Courts would range between 2,500 and 4,000 cases in the criminal division.

This size backlog, while a matter of concern, is not nearly as great as the extent of backlog which is frequently cited in North Carolina Superior Courts.

The relative amount of backlog (measured as a percentage of yearly caseload) varies considerably among counties. While the statewide average, projected from sampling procedures, indicates

an aging-cases docket of approximately 10 percent of the yearly cases, some counties have considerably larger backlogs.

Alamance County, for example, had nearly one-fourth of a typical yearly caseload in inactive, aging cases, in addition to a sizeable number of current year cases pending. Rowan County had twice the relative proportion of the State average of backlog cases (20 percent of a typical yearly caseload in old, inactive cases).

The largest backlog of cases in terms of the actual number of inactive cases exists (as of June 15, 1972) in Wake County. As of that date, Wake had 257 criminal cases in the Superior Court division in which no action was taken in 1971. The size of the Wake County backlog, relative to that county's yearly caseload, was 10.1 percent, a figure that places the Wake backlog at the upper level of the State average. This high relative average and large yearly caseload in Wake produces the most extensive backlog of any county in the State. The other counties with large yearly caseloads (Cumberland, Durham, Forsyth, Guilford, and Mecklenburg) had significantly smaller backlogs as a proportion of yearly caseloads. Mecklenburg, for instance, had a backlog of cases equivalent to only 2.3 percent of a yearly caseload, contrasted to 10.1 percent in Wake.

Table III-1 reports the actual size of the backlog of cases and the relative size of the backlog compared to the 1971 annual criminal caseload for the counties in the study. Backlog as reported in this table includes only criminal cases which had remained inactive during the entire year of 1971. It does not include 1971 cases which were pending at the end of the year.

Backlogs of aging cases is a fairly widespread occurrence in the State. Only four counties had no backlog—cases which had remained inactive for over a year. These were all rural counties.

Excessive or large backlogs are characteristic of only a few counties. Only four counties, among the 30 in the study, had a backlog of cases above the State range of six to ten percent of a yearly caseload.

The principal causes of large backlogs can be ascertained by looking at the age, nature of offense and geographic locations of backlogs. The average age of backlogged cases was 2.3 years, although half (or 56.5 percent) were less than two years old. However, the more serious aspects of backlog are indicated by the fact that there were 224 criminal cases of more than three years in age pending in the 30 counties.

Backlogs tend to predominate in urban counties, and as lawyers and court officials know, go hand-in-hand with congestion in the

Table III-1

NUMBER OF BACKLOG CASES BY COUNTY, WITH BACKLOG AS PERCENT OF 1971 CASELOAD AND MEAN AGE OF BACKLOG CASES IN MONTHS[1]

County	Number of Backlog Cases	No. of Backlog Cases as Percent of 1971 Caseload	Mean Age of Backlog in Months
Alamance	164	22.7%	23.9
Alleghany	0	0	—
Avery	0	0	—
Bladen	0	0	—
Buncombe	74	9.4	27.0
Burke	26	8.4	38.3
Catawba	24	4.5	29.7
Cumberland	20	1.7	29.7
Durham	22	1.7	24.9
Edgecombe	16	3.2	35.8
Forsyth	108	6.0	20.6
Gaston	42	5.0	33.5
Guilford	109	5.6	29.1
Harnett	16	6.5	28.5
Haywood	24	8.1	21.2
Iredell	10	1.0	24.2
Lenoir	22	3.3	20.9
Mecklenburg	59	2.3	24.2
New Hanover	136	7.8	42.7
Northampton	7	11.1	40.9
Orange	22	3.9	23.5
Robeson	40	6.1	31.4
Rockingham	2	0.3	16.0
Rowan	123	20.7	19.2
Surry	4	1.4	26.0
Union	35	7.6	22.5
Vance	9	2.9	30.3
Wake	257	10.1	26.3
Washington	0	0	—
Wayne	27	5.1	26.2
STATE TOTAL	1,398	5.9%	27.3

courts. Urban counties and counties with large increases in caseloads tend to have the largest backlogs. This seems to be uniformly

[1] Data on the number and age of backlog cases was not available for Nash, one of the counties in the study.

true, except in counties where backlogs have been disposed of in docket cleanups, using *nol pros* and dismissals.

Backlogs range in seriousness from regulatory offenses to murder, and no particular type of case (with the possible exception of driving under the influence of alcohol) seems to contribute to size of backlogs. DUI, larceny and burglary compose the largest number of backlogged cases, but these offenses are also the most prevalent among cases coming to the courts. The number of DUI cases which are backlogged does exceed the proportion of DUI cases reaching the courts by about 5 percent. DUI, as a result, constitutes a considerable proportion of the backlogs in Superior Courts. This is understandable, given the consequences of most DUI convictions. Yet, backlogged DUI cases probably cannot be ascribed to court-related delay; most likely it is defense or defendant-related. (See Table III-2).

Extent of Pending Cases in Superior Courts

The backlog of old cases, which have remained inactive through an entire year, represents only a small proportion of the cases awaiting trial at any one time in the Superior Courts. A more impressive figure is the large number of current year cases which have not been processed during the period of a calendar year.

In 1971, there were 18,907 criminal cases at the end of December which were awaiting trial. An important question is how many of these pending cases represent relatively young cases filed near the end of the year and how many are older cases filed early in the year? In other words, what proportion of the nearly 19,000 cases pending at the end of 1971 are cases approaching backlog status—that is, cases which are nearing a year of inactivity.

Current reporting procedures do not include the ages of cases pending in each county. However, the question of what proportion of pending cases can be considered to be approaching a backlog status can be determined from the information contained in the sample of cases in this study.

Among the 2,407 cases included in the study, 14.3 percent of all cases were pending six and a half months after the end of the court year.

By computing the age of pending cases, we can determine that about six percent of these cases were filed in December and that about 65 percent were filed in the last half of the calendar year. Only about one-third were more than a year old as of June 15, 1972. The average age of all pending cases was 10.4 months.

Table III-2

NUMBER AND PERCENT OF BACKLOG CASES BY TYPE OF CRIMINAL OFFENSE, WITH MEAN AGE OF BACKLOG CASES IN MONTHS

Type of Crime	Number	Percent	Mean Age in Months
Assault	102	7.3	27.3
Liquor Violation	9	0.6	30.2
Robbery	58	4.2	29.8
Murder/Manslaughter	71	5.1	30.2
Sex Offense	22	1.6	25.2
Driving Under the Influence	183	13.2	26.4
Other Traffic Offense	120	8.6	26.3
Larceny	215	15.5	28.3
Burglary	190	13.7	24.0
Injury to Real and Personal Property	20	1.4	30.6
Fraud	45	3.2	29.8
Drug Offense	82	5.9	23.8
Obstructing Justice	19	1.4	33.9
Familial Offense	66	4.8	29.4
Offense against Public Order/Safety	29	2.1	37.4
Forgery	89	6.4	28.3
Kidnapping	8	0.6	23.0
Miscellaneous/Regulatory	58	4.2	26.1
TOTAL	1,386*	100.0	27.3

* The types of crime involved in 12 cases were not ascertained.

Table III-3

FREQUENCY AND PERCENT DISTRIBUTION OF AGE OF PENDING CASES IN SUPERIOR COURTS

Age of 1971 Pending Cases, as of July 15, 1972	Original Cases		Appealed Cases	
	Number	Percent	Number	Percent
Less than 7 months	8	5.3	15	7.8
7.1 to 12 months	91	60.3	128	66.1
12.1 to 17 months	52	34.4	50	26.1
TOTAL	151	100.0	193	100.0

Table III-4

PERCENT OF 1971 CASELOAD PENDING IN EACH COUNTY, AS OF JUNE 15, 1972 WITH MEAN AGE IN MONTHS OF PENDING CASES

County	Percent of 1971 Caseload Pending	Mean Age in Months of Pending Cases
Alamance	51.1%	11.3
Alleghany	10.0	12.8
Avery	42.0	12.1
Bladen	4.1	11.3
Buncombe	21.4	9.9
Burke	16.3	9.8
Catawba	7.1	8.4
Cumberland	9.8	8.2
Durham	16.2	10.9
Edgecombe	2.2	11.9
Forsyth	12.9	11.6
Gaston	31.4	8.3
Guilford	10.8	10.9
Harnett	12.9	10.4
Haywood	19.7	11.5
Iredell	5.1	10.0
Lenoir	13.7	9.3
Mecklenburg	13.4	7.6
Nash	1.8	8.1
New Hanover	13.3	10.4
Northampton	10.5	11.1
Orange	26.2	11.0
Robeson	4.7	14.9
Rockingham	4.4	9.5
Rowan	21.6	9.2
Surry	9.0	9.8
Union	22.4	11.5
Vance	14.3	9.8
Wake	19.8	11.6
Washington	4.4	11.4
Wayne	16.5	9.5
TOTAL	14.3%	10.4

Thus, while the size of the pending caseload is extensive, most of the pending docket is composed of young cases which are disposed of in the first months of the next calendar year. It would be difficult to consider about three-fourths of these pending cases as a backlog problem.

The large number of pending cases, however, is an indication of delay in the court system. No case which is still pending six and a half months after filing can be determined to have had a speedy trial by model standards. When a large proportion of a docket is pending for this length of time, it also indicates considerable sluggishness in the court system.

The size of pending caseloads varies considerably by county. While the average proportion of pending cases statewide is 14.3 percent, some counties have from 20 to 50 percent of an annual yearly caseload pending mid-way into the next calendar year.

Alamance, which had the highest relative proportion of aging backlog, also had the highest percent of its 1971 caseload pending among the 30 counties of the study. In Alamance, 51.1 percent of the 1971 caseload was pending as of mid-year 1972.

Table III-4 shows the percentage of the 1971 caseload which was still pending in each county, mid-way into the next calendar year. The mean age of pending cases also is shown for each county.

The size of the pending docket, unlike the size of the aging backlog, is closely associated with the size of the yearly caseload in a county. Counties with large caseloads and particularly those counties with large increases in caseloads, tend to have the largest percentage of the yearly caseload pending.

The size of the pending dockets in a county is a fairly good barometer of the amount of delay and docket congestion in a county. Among the ten counties (Table III-4) which had more than 10 percent of their caseload pending mid-way into 1972, all were urban counties or counties with large increases in caseloads.

The size of pending dockets, which represents an inability of courts to process cases in a reasonably quick period of time after filing, is correlated more with the size of the docket than with other factors. There is little association between the size of pending dockets and the type of criminal offense which is pending. There is a slightly higher proportion of DUI (Driving Under Influence) and assault cases among pending cases than the proportion of these offenses in the docket. When dockets become crowded, defendants may have the opportunity to obtain continuances in certain cases where defense-related delay is most desirous than they are able to in courts which operate expeditiously.

Summary

Although the age of unprocessed cases is an important consideration in determining the dimensions of a "hard core" backlog problem, from an administrative standpoint any case awaiting trial—whether a case recently added to the docket or one which has remained inactive for months—contributes to the backlog of unprocessed cases demanding court time and attention. While the actual number of inactive, aging cases in State Superior Courts is considerably less than has generally been depicted, old cases and the large volume of current-year pending cases create a sizeable volume of cases awaiting trial in most counties.

Aging backlog (defined in this report as cases remaining inactive throughout the period of one year) constitutes roughly six to ten percent of the annual Superior Court caseload. In 1971, this amounts statewide to approximately 4,000 criminal cases.

In addition, approximately one third of the current year pending docket (1971) was still pending six months after the end of the calendar year. In 1971, this amounts to roughly 6,000 cases of a total of 18,900 which were pending at the end of the year.

Together aging cases and pending cases which are unprocessed mid-way into the next calendar year constitute a sizeable backlog problem in the State. In 1971, this backlog amounted to roughly 10,000 cases, based on sample data.

Although it is difficult to establish the exact cause of backlog, several factors point to the conclusion that the scope of backlog in North Carolina Superior Courts is not associated entirely with defense-related delay. Surely, a major reason why many cases do not reach trial in a reasonable period of time stems from the desire of defendants and defense counsel to avoid judgment as long as possible.

However, the large number of pending cases, a phenomenon which occurs uniformly throughout the State, points to other reasons for a backlog problem of the size and scope that exists in State Superior Courts. The large caseload and the increase in caseloads in recent years indicate that generally throughout the State, Superior Courts have been unable to dispose of cases as rapidly as new filings occur. Superior Courts appear to operate with a lag of from two to six months. The typical felony case or serious misdemeanor on appeal can expect to await about this amount of time before being brought to trial. Generalized delay of this scope facilitates a situation conducive to longer delay in situations where defendants seek to avoid being brought to trial.

Differing appeal rates for misdemeanors and the proportion of cases requiring jury trials, as well as increases in filings, exist among counties. These factors contribute to different sizes of backlogs and pending dockets. But management of court dockets also is a contributing factor. In some counties, greater attempts are made and attention is given to handling delay and backlog problems.

CHAPTER IV

Speedy Trials or Slow Trials in North Carolina?

Size of backlogs and pending cases are two indicators of delay. A more precise measure is the amount of time which elapses in the normal processing of cases in Superior Courts.

The "speedy trial" standard, used to calculate the elapsed time that occurs from arrest or arraignment to final disposition of a case, increasingly is becoming recognized as perhaps the best measure of delay and congestion in courts.

The President's Commission on Crime and the Administration of Justice has suggested a model timetable for scheduling and adjudicating a criminal case. The Commission's timetable includes reasonable intervals between specific steps in court proceedings. For example, a preliminary hearing for jailed defendants should follow initial appearance before a magistrate by not more than 72 hours. Adherence to the proposed national standard would result in the disposition through trial of almost all criminal cases within four months and the decision of appeals within an additional five months.

The Commission stated:

> A certain amount of delay is inherent in a criminal case. Mobilization of police and civilian witnesses, prosecution, defense, and judiciary is a complex task. Each part of the process requires certain key participants, whose behavior cannot be predicted with certainty. Last-minute plea negotiations free judges and courtrooms unexpectedly. Last-minute postponements because of the unavailability of key witnesses or conflicting engagements of counsel unbalance court scheduling. Predicting when a trial will end is necessarily inexact and rigid schedules for pretrial and judicial events are impossible. Even with these limitations it is possible to establish boundaries for permissible time intervals, both for individual steps in the process and for the case as a whole. While any time limit is somewhat arbitrary, nine months would appear to be a reasonable period of time to litigate the typical criminal case fully through appeal; it would be difficult to justify any longer period.[1]

[1] "Task Force Report: The Courts," President's Commission on Crime and the Administration of Justice (Washington: U. S. Government Printing Office, 1967), p. 84.

A model timetable for speedy trials can serve several purposes. It can serve as a barometer of the amount of delay in courts. As a model, it suggests the kinds of steps necessary to dispose of cases within a reasonable time and could help to eliminate long periods of time during which nothing happens in the processing of cases. Secondly, the "speedy trial" proposal has become a legislative standard for insuring the right to reasonably quick justice, a guarantee in the Sixth Amendment.

Speed of Litigation in Superior Courts

In assessing the promptness of case litigation in North Carolina Superior Courts, we have applied the model time standards suggested by the President's Commission.

Using these proposed national standards as an overall measure of the speed of litigation in North Carolina Superior Courts, one must conclude that North Carolina Courts fall far short of any model standards for a speedy trial.

The mean time elapsed for all felony offenses in the sample of the 1971 caseloads was approximately 4.3 months and far less than half of all cases met the speedy trial standard.

In examining the total sample of cases (Table IV-1) it is obvious that the greatest majority of cases filed in Superior Courts in 1971 took considerably longer from arrest to sentence than the model 101-day standard of the President's Commission. In the sample:

—14.4 percent of the cases were pending at the time of the study (six and a half months after the end of the year). No elapsed time could be established for these cases, but at the time of the study, these pending cases had already exceeded a reasonable time frame according to model standards.

—40.9 percent of litigated cases received a speedy trial by model standards. Slightly more misdemeanors on appeal received a speedy trial than felonies originating in Superior Court.

—43.5 percent of the cases which had been adjudicated at the time of the study consumed more elapsed time than provided for in model standards.

—the mean amount of elapsed time for cases adjudicated in Superior Courts was 4.3 months in North Carolina, compared to a 3.5 months speedy trial standard.

An excessive amount of elapsed time in the litigation of Superior Court cases in the State does not appear to be limited to particular counties, nor to those with heavy caseloads.

Twenty-eight of the 30 counties sampled experienced mean delay

Table IV-1

PERCENT OF SAMPLE OF NORTH CAROLINA CRIMINAL CASES MEETING SPEEDY TRIAL STANDARDS PROPOSED BY PRESIDENT'S COMMISSION

		Percent	Number
Cases Meeting Speedy Trial Standard		40.9	984
Cases Not Meeting Speedy Trial Standard		57.8	1,393
a) Pending Cases, Still not Processed	14.3		347
b) Cases Processed, in Elapsed Time Periods Greater than Model Standards	43.5		1,046
Age Not Ascertained		1.3	30
TOTAL		100.0	2,407

(or elapsed time from arrest to sentence) for a majority of 1971 cases which was in excess of the criteria for processing of court cases established by the President's Commission.

To this extent, one can conclude that North Carolina Superior Courts fail to provide a speedy trial for a majority of defendants if we accept "speedy trial" as it has been defined by national standards.

Where Delay Occurs in the Court Process

By analyzing steps in the court process, it is possible to ascertain which phases consume the most time and contribute to the greatest amount of delay in the processing of cases in North Carolina courts. Four segments of the process have been analyzed to determine at which steps the greatest amount of delay occurs. These steps are:

Arrest to bail, which is comparable to the Commission's time period of arrest to first judicial appearance. According to model standards, proposed by the President's Commission, this should take place within hours after arrest.

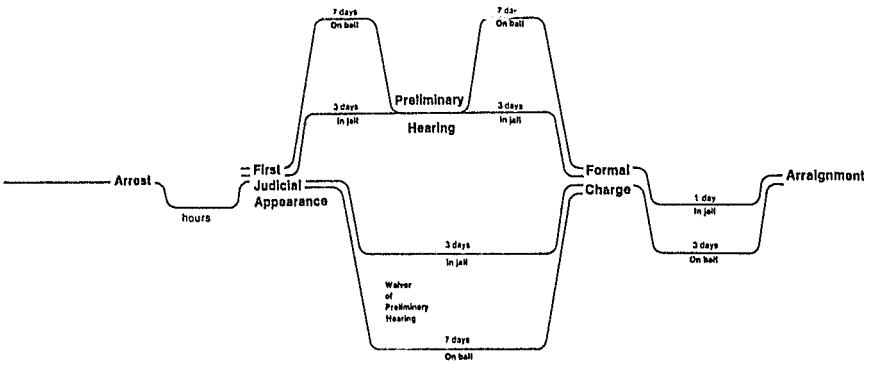
Arrest to hearing, which is comparable to the phase of arrest to preliminary hearing in the model timetable. A model standard of seven days is proposed.

Hearing to indictment, which is comparable to preliminary hearing to formal charge. Again, the model standard for the normal processing of cases is seven days.

Formal charge to trial, which is comparable to the period from formal charge to sentencing. According to model standards, this

Table IV-2

HOW NORTH CAROLINA SUPERIOR COURTS COMPARE
WITH MODEL TIMETABLE FOR PROCESSING OF FELONY CASES



Arrest to Bail

Model: Within Hours
N. C.: 7.9 days

Hearing to Indictment

Model: 7 days
N. C.: 40.8 days

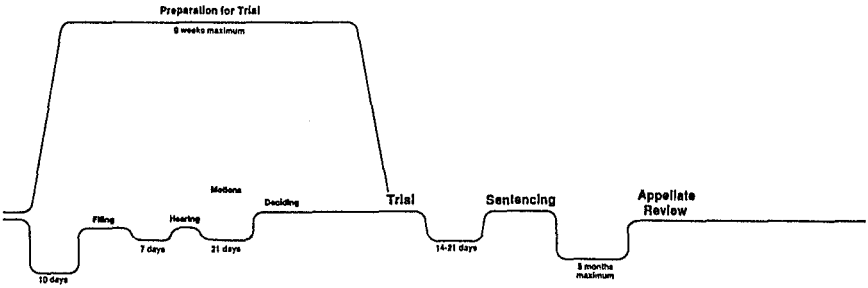
Formal Charge to Sentence

Arrest to Hearing

Model: 7 days
N. C.: 25.9 days

Arrest to Sentence Model: 101 days

* Based on 1,129 cases originating in North Carolina Superior Courts during 1971.



Model: 80 days N. C.: 63.6 days

Sentence to Appellate Review

Model: 5 months
N. C.: Unknown

N. C.: 130.3 days

stage of the process should consume no more than 80 days, on the average.

The model standards of the President's Commission were developed for the processing of felony cases. As a result, felony cases are analyzed separately from misdemeanors.

Of the 1,120 felonies, or cases originating in the Superior Courts, 946 or 86.3 percent had been adjudicated at the time of the study. Some 154 or 13.7 percent were pending, five and one-half months aft _ the end of the year.

Of the 946 which were tried in Superior Courts, 48.4 percent were processed from arrest to sentence in Superior Court within the 101-day model time frame of the President's Commission.

Table IV-2 (Model Timetable for Felony Cases) compares the processing time for North Carolina felonies with the time frames suggested by the President's Commission. Although procedures and steps in the court process in North Carolina vary considerably from the procedures outlined in the Commission Report, it is possible to compare segments of the court process with model times proposed by the Commission.

Overall, the average time for felonies which had been processed in Superior Courts was 130.3 days in North Carolina, compared with the 101 days suggested by the Commission. Although it appears that the speed in processing of felonies in North Carolina is only about one month longer than the suggested time by model standards (or approximately four and a half months to process a felony, on the average in North Carolina, compared to three and a half months by model standards) it should be kept in mind that less than half or 48.4 percent were actually processed within the model time frame. If indeed, one accepts the reasoning of the Commission that 101 days or roughly three and a half months is adequate time to process all except the most unusual felony cases, then the four and one-half month average in North Carolina and the fact that less than half of all cases meet the model time frame would indicate considerable delay in North Carolina courts.

The delay that results in North Carolina Superior Courts appears to occur to a far greater degree in the proceedings from arrest to indictment than in the trial proceedings. By model stansards, court proceedings which take place after arrest and until the time of formal charge or indictment should consume about 14 days. On the average, the typical felony case in North Carolina consumes about two months, or 67 days, compared to the half-month standard of the President's Commission. On the other hand,

the trial stage, which includes time for preparation of trial, trial and sentencing, consumes about two months as compared with an 80-day standard proposed by the Commission. This would suggest that for typical felony cases any delay in their speedy litigation is essentially a result of factors which inhibit their coming to trial. No doubt the long time period which elapses from arrest to indictment results from an inaction or inattention to cases due to heavy caseloads in most courts. Once cases reach the point where they can be considered for trial preparation, however, the speed with which they are litigated compares favorably with model national standards. Such a pattern would suggest that a considerable amount of delay in North Carolina courts results from the inability of the system to deal expediently with caseloads, in addition to other factors, such as defendant-related causes which are known to contribute to delay in the processing of criminal cases.

Some caution probably should be exercised in comparing average performances in criminal cases with timetable standards. Even in the most congested courts, many cases pass through quickly on a guilty plea and thus the average for all cases may appear deceptively short when compared to the time it takes to process the complex cases where a not guilty plea is entered. Even in felony cases, an overwhelming majority of defendants plead guilty. In the sample, 78 percent of known pleas in felony cases were pleas of guilty. The average time from arrest to sentence for cases where defendants pleaded guilty was considerably shorter than in cases where defendants pleaded not guilty. As a result, 56 percent of all cases with guilty pleas met the model 101-day standard, whereas only 34 percent of cases with not guilty pleas were litigated within the model standard.

Processing of Misdemeanor Cases in Superior Courts

Up to this point, only felonies have been considered in terms of speedy trial standards. No standards exist for establishing ressonable time frames for the processing of misdemeanors since the model time frame developed by the President's Commission was developed specifically for felonies. One would assume that, as a rule, felonies being more serious crimes, would require more time for litigation at all stages of the court process than would misdemeanors. Thus, there may be some doubt as to the applicability to misdemeanors of model standards for felonies.

Yet, misdemeanors on appeal from lower (District) Courts com-

Table IV-3

AVERAGE TIME TAKEN TO PROCESS FELONY CASES
IN N. C. SUPERIOR COURTS, COMPARED TO
MODEL STANDARDS

		%	Cases
ARREST TO BAIL	7.9 Days in N. C.; Model Time: Within Hours		
	No Bail	38.0	260
	1-7 Days	29.9	273
	8-30 Days	14.9	120
	Over 30 Days	7.3	50
ARREST TO HEARING	25.9 Days in N. C.; Model Time: 7 Days		
	1-7 Days	25.1	216
	8-30 Days	45.9	377
	Over One Month	29.0	238
HEARING TO INDICTMENT	40.8 Days in N. C.; Model Time: 7 Days		
	1-7 Days	29.9	246
	1-30 Days	23.9	197
	31-60 Days	24.8	204
	Over 2 Months	21.4	176
FORMAL CHARGE TO SENTENCE	63.6 Days in N. C.; Model Time: 80 Days		
ARREST TO SENTENCE	130.3 Days in N. C.; Model Time: 101 Days		
	1-101 Days	43.4	458
	Over 101 Days	51.5	488

prise a sizeable proportion of the caseloads of Superior Courts. In the sample, 53 percent of the cases were misdemeanors on appeal from District Courts. With this sizeable proportion of Superior Court caseloads representing appealed cases, it is obvious that misdemeanors affect considerably the work load and the speed of litigation in Superior Courts.

Table IV-4 indicates the most prevalent misdemeanors that are appealed to Superior Courts.

Table IV-4

LEADING CATEGORIES OF MISDEMEANORS, ON APPEAL TO SUPERIOR COURTS, BY OFFENSES CHARGED AT TIME OF ARREST

Crime	Percent of Superior Court Caseloads	Number in Sample
Driving Under Influence of Alcohol	16.6%	396
Other Traffic Offenses	9.7	231
Assault	6.4	153
Public Drunkenness	3.7	88
Larceny	3.1	74
Familial Offenses	2.8	67
Worthless Checks	2.3	55
Liquor Violations	1.9	45
Obstructing Justice	1.5	36
Breaking and Entering	1.0	24

In comparing original and appellate cases, on model time standards, one would expect that the character of the two types of cases would be essentially different. Original cases in Superior Court represent more serious violations of the law with higher penalties for conviction. One would therefore expect that such cases may take longer to prepare for trial and longer in fact to litigate. Appealed cases, on the other hand, have the advantage of already being tried with evidence, documentation and court deliberation, all of which is information generally known by the district attorney—although cases are tried *de novo*. One suspects, however, that the cases which are appealed to Superior Court are those in which the defendant feels especially concerned about his District Court verdict and is willing to invest additional time and financial resources to obtaining a reversal of his conviction. This may be because he feels strongly about his innocence or because the pun-

ishment rendered in the District Court is more than he is willing to accept unchallenged, i.e., the loss of driving privileges in a drunken driving conviction. Given the motivations for appeal, it would be a mistake to conclude that in all or most instances appellate cases represent less difficult cases that can be disposed of with greater speed than felony offenses.

Of the 1,287 misdemeanor cases in the sample, all but a few of which were on appeal from District Courts, 85 percent or 1,084 had been litigated five and a half months after the calendar year in which they were filed. Slightly more 1971 misdemeanors on appeal were pending at the time of the study than were felonies which had been filed in 1971.

Misdemeanors in Superior Court appear to suffer the same relative amount of delay as felonies which originate in Superior Court. Following sentence in District Court, 49 percent of misdemeanors were litigated in Superior Court within the three and a half months model time standard. This is almost the same proportion of felonies which were litigated in Superior Court by the model standards. The average time from District to Superior Court sentence is approximately 115 days for misdemeanors on appeal, compared to 130 days average time from arrest to sentence for felony cases. Although there are no clear standards of the length of litigation time one might expect for misdemeanors on appeal compared to a more serious felony, the data indicate that in North Carolina Superior Courts the time it takes to litigate a misdemeanor after District Court sentence is roughly comparable to the time consumed in litigating a felony from the period of arrest to Superior Court sentence.

Misdemeanors on the average take 16 weeks after District Court sentence to be litigated in Superior Court. The model time schedule for trial preparation of felonies was established at nine weeks. Felonies in Superior Courts compare more favorably in terms of the speed in which they are prepared for and undergo trial than do misdemeanors. But like felonies, misdemeanors on appeal to Superior Courts appear to experience longer periods of inattention as they await trial at the appellate level.

The relative long period of delay which both original and appealed cases experience in Superior Court becomes especially noticeable when the slowness of litigation of misdemeanors in Superior Court is compared with the time that elapses in the trial of the same cases in District Court.

Whereas misdemeanors on appeal took an average of 115 days to be disposed of in Superior Court, the same cases when tried in District Courts took on an average 41 days from arrest to District Court sentence. Whereas only 49 percent of misdemeanors were litigated by model time standards in Superior Court, 90.4 percent of misdemeanors were tried during the three and a half month limit in District Court.

Overall, District Courts appear to operate with much less delay than Superior Courts. Table IV-5 compares the time frame in District Court cases which were appealed to Superior Courts with the average time frame of original cases in Superior Courts.

Table IV-5

COMPARISON OF TIME REQUIRED TO LITIGATE MISDEMEANORS IN DISTRICT COURT TO FELONIES IN SUPERIOR COURT[1]

	Mean No. of Days		Percent Meeting Model Standards	
	Misdemeanors	Felonies	Misdemeanors	Felonies
Arrest to Bail	2.2	7.9	23.1	37.1
Arrest to Trial	41.7	66.7	90.4	48.4

[1]Based on 1,020 misdemeanors which were appealed to Superior Courts and 946 felonies which originated in Superior Court. In the majority of motor vehicle misdemeanor cases, the defendant is cited to court and no bail is involved.

Table IV-6

PROPORTION OF APPELLATE CASELOADS AND AVERAGE TIME OF LITIGATION FOR MISDEMEANORS IN SUPERIOR COURTS

	Percent of Appellate Dockets	Mean Days from District Court to Superior Court Sentence
DUI	30.0	128
Other Traffic	17.8	123
Assault	12.4	107
Public Drunkenness	9.8	85
Larceny	6.6	82
Familial Offenses	5.1	116
Worthless Checks	4.7	93
Liquor Violations	4.2	163
Obstructing Justice	3.3	119
Breaking and Entering	2.2	74

An important methodological limitation should be noted in the data comparing time frames of misdemeanors in District Court to felonies in Superior Court. Only Superior Court dockets were sampled and the misdemeanors reported above include only cases which were appealed to Superior Court; these do not compose a valid sample of District Court cases. Indeed, since the sample is composed entirely of misdemeanors on appeal, one would expect the data to reflect only the most serious cases in District Courts—the ones which would require the greatest amount of time to litigate. It would be incorrect to infer that the time frames reported are representative of all District Court cases, but only those District Court cases that become a part of Superior Court dockets through the appellate process.

In analyzing the types of offenses that are appealed to Superior Court, it is apparent that certain misdemeanors have a considerable impact on both the caseloads and speed of litigation of the Superior Courts. Driving while under the influence of alcohol and other traffic related offenses compose not only the bulk of appealed misdemeanors but are also the cases which take longer than average time to litigate.

Drunken driving offenses not only constitute nearly one-third of all cases appealed to Superior Courts; these cases require a longer period of litigation than all but one other category of com-

monly appealed misdemeanors. While the factors contributing to long time periods for litigating DUI cases probably stem more from defendant-related causes than from the court process, the impact of both the size and delay factor of both DUI and other traffic offenses constitute a major part of the caseloads and speed of litigation of cases in Superior Courts. As such, they are a major contributor to the overall picture of delay in the Superior Courts.

Table V-4

NUMBER AND PERCENT OF CASES BEING PROCESSED BY SPEEDY TRIAL STANDARDS, BY TYPE OF ATTORNEY FOR THE DEFENSE

	Percent of Cases Processed in 101-Day Standard	Number of Cases
Public Defender Attorneys	59.0	46
Court-Appointed Attorneys	52.8	276
Privately-Retained Attorneys	38.9	335

Table V-5

REASONS FOR DELAY IN BACKLOG CASES

Reason for Delay	Number	Percent
Called and Failed	561	40.1
Defense Request for Continuance	49	3.5
Prosecution Request for Continuance	24	1.7
Failure to Reach on Calendar	8	0.6
Failure of Witnesses to Appear	7	0.5
On Appeal	91	6.5
Defendant Missing	3	0.2
Defendant Sick	59	4.2
Reopened Case	3	0.2
Continuance	5	0.4
Inactive	3	0.2
Mistrial	8	0.6
Post-Conviction Hearing	9	0.6
Other Reasons	163	11.7
Not Known	405	29.0
TOTAL	1,398	100.0

Chapter V

Where Delay Occurs

The causes of delay in the administration of justice can be attributed to numerous sources, but lack of resources, inefficient management of court time and personnel and an increasing number of cases to be decided are clearly the leading factors affecting the speed with which cases can be processed. Backlogs and large pending dockets are affected by the same factors and, additionally, tend to increase in size in counties where expediting practices of plea bargaining and *nol pros* are not utilized.

Few courts have been able to draw a quantitative relationship to show how much each of the several leading causes of delay contribute to the problem. However, by analyzing where the greatest amount of delay occurs we can give some indication of the contributing effect of various factors.

In looking at the speed in which cases are litigated in the 31 counties of the study, two factors emerge. Delay, as measured by the speedy trial standard, is associated with: (1) counties with small caseloads and correspondingly small amounts of resources; and (2) large urban counties, especially those with the greatest increases in caseloads. Delay is most acute in rural counties which have small caseloads but limited resources, such as court personnel and court time. Urban counties, which are also the counties with the largest increase in caseloads, rank next to small rural counties in the extent of delay. Delay in urban counties, however, varies considerably and is a function of diverse factors.

Middle-size urban counties, with stable caseloads, experience the least delay and in fact compare favorably with model standards for processing of cases.

Delay in Rural Counties

Rural counties with small caseloads no doubt experience extensive delay in litigating cases because of limited resources of solicitorial and judge time. All of these counties are in multi-county judicial districts. Typical of these counties are Allegheny which had 50 cases filed in 1971 but processed only half of this small case-

load within model time standards, and Surry County which processed only 13.8% of a 288-caseload within the model time frame. Table V-1 shows the counties with the smallest annual caseloads, the percent of cases processed by model standards and the mean time consumed in processing cases from arrest to sentence.

Table V-1

EXTENT OF DELAY IN RURAL COUNTIES IN SAMPLE

County	1971 Caseload	% Felonies Litigated by Model Standard	% 1971 Cases Pending	Backlog as Proportion of 1971 Caseload
Allegheny	50	50.0	10.0	0
Avery	66	28.6	42.0	0
Bladen	198	57.1	4.1	0
Harnett	247	36.4	12.9	6.5
Haywood	297	40.4	19.7	8.1
Northampton	63	25.0	10.5	11.1
Surry	288	13.8	9.0	1.4
Washington	68	42.9	4.4	0

Delay is almost inevitable in small rural counties due to the limited number of court days and court sessions scheduled. The problem of scheduling cases is most closely associated with these limited resources. Many cases age simply because one continuation will result in a case having no opportunity to be tried again until another term of court, which may not occur until six months later.

While the circumstances of scheduling cases due to limited court terms are obvious to judicial and court personnel, the fact should also become obvious that in many cases only one in ten defendants can expect to receive a speedy trial in courts with limited personnel and limited sessions.

In order to obtain speedy trials in these counties alternative arrangements of utilizing court time and court personnel should be considered. While additional personnel and frequent court sessions may not be justifiable on an economic basis, other arrangements such as multi-county court terms could be considered.

Urban Delay

A different set of factors contribute to delay in urban counties.

The extent of delay varies from a low of 33 percent of cases being litigated by model standards in Buncombe County (among the 31 counties sampled) to a high of 71 percent processed by model standards in New Hanover. Eight metropolitan counties in the state were included in the study and along with Alamance, Rowan and Orange counties these constitute the court jurisdictions with the largest increases in caseloads during 1971, as reported by the Administrative Office of the Courts. Table V-2 shows the percent of felonies litigated by model time standards, the cases pending and proportionate size of backlogs in urban counties and counties with largest caseloads.

Table V-2

EXTENT OF DELAY IN URBAN COUNTIES AND COUNTIES WITH LARGEST INCREASES IN CASELOADS

County	1971 Caseload	% Felonies Litigated by Model Standards	% 1971 Cases Pending	Backlog as Proportion of 1971 Caseload
Buncombe[1]	790	33.3	21.4	9.4
Cumberland	1,209	39.2	9.8	1.7
Durham	1,330	41.6	16.2	1.7
Forsyth[1]	1,798	55.9	12.9	6.0
Guilford[1]	1,940	50.0	10.8	5.6
Mecklenburg[1]	2,524	46.4	13.4	2.3
New Hanover[1]	1,745	70.7	13.3	7.8
Wake[1]	2,539	48.5	19.8	10.1
Alamance[1]	722	69.2	51.1	22.7
Rowan[1]	594	61.5	21.6	20.7
Orange[1]	561	32.5	26.2	3.9

[1] Counties with largest increase in caseloads, as reported in Annual Report, Administrative Office of the Court, 1971.

The greatest speed in processing of cases, the smallest proportionate backlogs and lowest percentage of pending cases occur in non-metropolitan, urban counties. These counties, generally, have not experienced rapid increases in caseloads.

Court Personnel and Delay

While it is possible to determine where delay occurs and meas-

Table V-3

EXTENT OF DELAY IN NON-METROPOLITAN, URBAN COUNTIES

	1971 Caseload	% Felonies Litigated by by Model Standards	% 1971 Cases Pending	Backlog as Proportion of 1971 Caseload
Burke	310	31.3	16.3	8.4
Catawba	536	42.4	7.1	4.5
Edgecombe	501	70.4	2.2	3.2
Gaston	841	38.5	31.4	5.0
Iredell	973	35.5	5.1	1.0
Lenoir	699	90.9	13.7	3.3
Nash	705	57.1	1.8	—
Robeson	660	61.7	4.7	6.1
Rockingham	719	66.7	4.4	0.3
Union	461	65.4	22.4	7.6
Vance	307	33.3	14.3	2.9
Wayne	530	73.3	16.5	5.1

ure the magnitude of delay, it is a far more difficult task to say why it occurs.

Courts are usually held responsible for the delay, but delay is not totally the result of court operations nor is all delay totally under the control of court personnel.

In an adversary system both state and defendant must share responsibility for the speed with which litigation is completed.

Although most policies which are advocated to speed up the court process will invariably begin with the court system and the practices of court personnel, it would first be useful to determine to what extent delay is defense-related.

The assumption that all defendants and their attorneys desire a speedy trial is erroneous. In many instances, it is to the defendant's advantage to postpone and delay trial as long as possible.

To what extent then do defense attorneys and defendants share in the responsibility for delayed cases?

One way to answer this question is to determine the extent and degree of association between elapsed time in processing of cases (delay in trial) and backlogs with the type of attorney for defense (i.e., private attorney, court-appointed attorney, and public defender system).

We hypothesized or expected that counties with the highest incidence of privately retained attorneys experience the greatest

amount of backlog and delay. Our expectation was that court-appointed attorneys and public defenders will be more inclined to speedy disposition of cases, including greater use of the guilty plea to dispose of cases.

The extent of private attorneys varies considerably among counties. Court-appointed attorneys are available in all counties and the extent of court-appointed attorneys varies by socio-economic differences among counties. Three counties, at the time of the study, were operating under a public defender program.

In general, the data tends to bear out our assumed relationship between type of attorney and amount of delay in the court system.

Counties where there is a high proportion of defendants represented by private counsel are counties with the lowest percentage of cases being processed by model standards. In analyzing counties by the percent of defendants represented by private counsel and the proportion of cases in each county which had been processed by model standards, we obtain a correlation of minus .47, or an inverse relationship between high levels of private counsel and cases processed by model speedy trial standards. This means that counties which have the lowest level of cases processed by speedy trial standards are counties where the highest proportion of defendants are able to afford private counsel.

This indicates that defense-related factors are indeed a contributing cause in the total picture of criminal court delay. This conclusion is reinforced by comparing the speed of litigation with the three types of counsel available in the court system, on a case basis when type of attorney is known.

In Table V-4, type of counsel is compared with the percent of cases litigated by model speedy trial standards in 657 cases where the type of counsel could be determined from court records.

As the data indicate, a significantly higher proportion of cases handled by public defenders and court-appointed attorneys met model speedy trial standards than did cases represented by private attorneys. While 38.9 percent of cases involving private attorneys were litigated within the 101-day, model speedy trial time period, 52.8 percent represented by court-appointed attorneys and 59.0 percent represented by public defenders were disposed of within this time period.

Some reservations are in order with regard to interpretation of the data. While one might justify public defender systems on factors such as cost and quality of representation, we would hesitate to conclude, on the basis of the limited use of public defenders in

Table V-4

NUMBER AND PERCENT OF CASES BEING PROCESSED BY SPEEDY TRIAL STANDARDS, BY TYPE OF ATTORNEY FOR THE DEFENSE

	Percent of Cases Processed in 101-Day Standard	Number of Cases
Public Defender Attorneys	59.0	46
Court-Appointed Attorneys	52.8	276
Privately-Retained Attorneys	38.9	335

the state court system, that the public defender system is inherently more efficient than court-appointed counsel.

As a second conclusion regarding type of attorney and delay in the court system, we find that not only is the process of litigating cases slower where private counsel are extensively used, but the problem of backlog also seems to be exacerbated by the extent of private-counsel representation in a court system. The most extensive backlogs occur in counties where the highest proportion of cases are represented by private counsel. Using the data obtained in this study, we obtain a correlation of minus .35. This indicates that the highest backlogs occur in counties with the highest percentages of cases represented by private counsel. Again, while one might conclude that there is indeed an association between the extent of backlog and the amount of private counsel engaged in the court system, it would be scientifically invalid to conclude that private counsel cause backlog of the proportion indicated. The correlation indicates a fairly strong association between counsel and delay, but other factors may be as causal as counsel.

Likewise, to contend that private counsel appears to slow the processes of justice in terms of both backlogs and speed of litigation is not to contend that private counsel does not offer other benefits to the client or the court system. It is hardly arguable that private counsel affords to a litigant a more conscientious and higher quality of representation than court-appointed counsel. Indeed in private counsel one is faced with one of the many facets of court delay: experienced privately retained counsel which demands and receives all of the rights for a defendant will necessarily have

the effect of delaying trials in many incidents. On the other hand, one can only hope that excesses such as unreasonable continuances and other methods of delaying trials can be curbed to the extent that both quality counsel and speedy trial can be achieved simultaneously in the court system.

On the other side of the adversary system is the solicitor whose behavior and prosecutioral policies can either impede or expedite the speed of litigation. Policies involving the use of *nol pros* and case dismissal vary among solicitors. It is often assumed that those solicitors who frequently *nol pros* cases will have no backlog problems. Thus a more permissive policy of *nol pros* is frequently advocated as a method of expediting cases in the court system.

Undoubtedly *nol pros* does expedite court litigation and can be used to clear dockets of untried cases. However the data of this study show that the counties in which *nol pros* is practiced most frequently on a continuing basis are also the counties which maintain the most extensive backlog problem. A fairly strong correlation of .24 is obtained between percentage of cases *nol prossed* in a county and the extent of backlog in the county.

Given this occurrence, caution should be exercised in advocating *nol pros* as a palliative for all of the ills of docket congestion. In the first place, dismissing cases for the primary purpose of reducing backlogs or clearing dockets is an unsatisfactory way of dealing with criminal offenses. When used for this purpose, *nol pros* represents a failure of the court system to function properly in bringing cases to trial. Secondly, it is doubtful from the data analyzed in the North Carolina Superior Court docket, that *nol pros* achieves the intended effect of eliminating backlog, particularly in counties experiencing either excessive caseloads or counties which have insufficient court time or court personnel to maintain a reasonably speedy process of litigating cases.

Like *nol pros*, the negotiated plea (or plea bargaining) as a technique for dealing with congested dockets varies considerably in the extent to which it is practiced among solicitors and in courts of the State. Plea bargaining definitely affects the speed of litigation in court systems when its use leads to a significantly greater proportion of cases resulting in guilty pleas and a reduced number of cases going to jury trial.

Plea bargaining is the subject of intense controversy. While it has been recognized by the Supreme Court and bar associations as a reasonable and proper method to expedite justice in American courts, it can be misused if its major purpose is simply to allow

courts to keep up with heavy caseloads and heavy backlogs.

Except in interviews with solicitors, it is difficult to determine the extent to which the practice of plea bargaining is utilized in State courts. Attitudes vary from liberal use of plea bargaining to expedite court dockets to definite prohibition against the use of charge reductions for the purpose of speeding up the court process.

Nol pros, or dismissal of cases, appears to be a more widely used practice in this State as a technique to deal with excessive caseloads and backlogs than the practice of plea bargaining.

Would More Personnel Relieve Delay Problem?

In any court system where delay in processing cases and large backlogs are prevalent, a general solution is usually advocating more personnel, particularly judge and solicitorial time. The President's Commission concluded that personnel factors were one of three major contributors to delay; however, the Commission advocated more efficient utilization and management of personnel rather than additional personnel as the first step toward speeding up the court process.

In a separate analysis—only the results of which are reported here—the association of personnel time was related to delay in an attempt to answer more conclusively the question of how much additional personnel would speed up the adjudication of cases in North Carolina Superior Courts. Utilizing men-days of judge, solicitor and supporting personnel, such as clerks, assigned to each county in the study during the year 1971, we find that solicitors and clerks have greater availability in urban areas and less in rural areas. Also, urban areas have greater access to time in court with judges than do rural areas.

The surprising finding of this analysis, however, is that while more judge time assigned to a county is correlated with a higher jury trial load and while more solicitorial time results in more cases going to trial in a county, neither greater judge availability nor more solicitorial time is related to a higher proportion of cases being adjudicated within speedy trial time limits in a county. In fact, greater solicitor availability is positively correlated with greater delay in a county.

One explanation is an elaboration of "Parkinson's Law"—that is, that personnel generate or increase their own workload as their availability increases. The solicitor is in the best position to determine his and all other's workload in the court. If a solicitor has many assistants (i.e., higher solicitor availability), it may be that

he is inclined to *nol pros* fewer cases, plea bargain less frequently, and thus take more cases to trial.

If, indeed, this is the reason why greater solicitor availability was not associated with speedier trials in the counties of this study, several conclusions could be reached concerning the impact of more personnel as the delay problem in courts:

1) In heavily overburdened courts (typical of urban counties in North Carolina) more assigned judge and solicitor time, probably could not have much initial impact in accelerating or alleviating the elapsed time that occurs in the processing of cases overall. More personnel would probably mean more cases would go to trial and that fewer cases would be dismissed. While the desired impact of giving closer scrutiny to a larger proportion of cases would occur, the overall speed of the court process probably would not be affected to a considerable degree. In other words, more judges and solicitors assigned to overburdened courts probably would not result in more speedier trials as much as it would result in less occurrence of deleterious effects of delay—the *nol prossing* and plea bargaining in large numbers of cases.

2) In rural counties, where delay is partially attributable to unavailability of personnel time, more personnel could greatly accelerate the elapsed time that occurs in the litigation of most criminal offenses. However, making more judge and solicitor time available to these counties could be achieved only at a low and perhaps undesirable cost-benefit ratio, unless arrangements such as a multi-county court sessions could be implemented.

Other Reasons for Delay

Availability of personnel is one factor contributing to speedy trials. Perhaps equally as great as the lack of or inefficient uses of personnel resources is defendant-caused delay. Most defense attorneys and some solicitors, through experience, will contend that it is the rare defendant who really wants speedy justice. To the extent that this is true, swift and speedy trials become more desirable from the standpoint of system benefits than the constitutional rights of individuals. While not denying that delayed justice is an infringement on constitutional rights of defendants, speedy trials can be justified to considerable extent on the basis that speedy justice, like sure justice, can be a major deterrent to crime.

The informal practice of granting continuances, scheduling the appearance of witnesses, defendants and others involved in the court process; and serving of capiases and summons, make it dif-

ficult to determine from court records the extent to which defense and defendant-related behavior contribute to delay. An attempt was made to ascertain the reason or reasons why each of the backlogged cases had not come to trial. In some cases, the information from case records was supplemented by talking with clerks and solicitors. (This practice was not followed in all cases because court personnel in many cases did not know why cases had not been brought to trial.)

Table V-5 indicates the reasons, obtained either from case records or information supplied by court personnel, why backlogged cases were pending.

Table V-5

REASONS FOR DELAY IN BACKLOG CASES

Reason for Delay	Number	Percent
Called and Failed	561	40.1
Defense Request for Continuance	49	3.5
Prosecution Request for Continuance	24	1.7
Failure to Reach on Calendar	8	0.6
Failure of Witnesses to Appear	7	0.5
On Appeal	91	6.5
Defendant Missing	3	0.2
Defendant Sick	59	4.2
Reopened Case	3	0.2
Continuance	5	0.4
Inactive	3	0.2
Mistrial	8	0.6
Post-Conviction Hearing	9	0.6
Other Reasons	163	11.7
Not Known	405	29.0
TOTAL	1,398	100.0

Both sources combined supply an inadequate picture of reasons why cases have not been tried. For nearly a third (29 percent of the cases) no reason at all could be ascertained. Other than "called and failed"—a catch-all type of explanation, which represented 40 percent of the reasons given—concrete causes of delay could be determined for only 18 percent of the cases. Five percent of these reasons were related to defendants—either the defendant was missing, sick or could not stand trial. Another four percent represented defense requests for continuance. Approximately 9 percent of

delays were related to court procedures, such as post-conviction hearings, reopened cases, mistrials and appeals. The failure of witnesses to appear was indicated in less than one percent of cases.

The large category of "called and failed" is a catch-all reason which indicates more than simply that defendants did not appear at the time that cases were scheduled for trial. Interviews with solicitors revealed that this notation in court records is utilized to indicate a variety of reasons, including failure to reach on the court calendar. Still, solicitors did indicate that the failure of defendants to appear or the inability to locate defendants was one of the primary causes why backlogged cases had not been brought to trial. Lack of court time to try cases and defense requests for continuances were the other two primary cases listed by solicitors. In general, solicitors indicated that defense requests were handled informally and these were seldom indicated in court records. The "called and failed" category, no doubt, represents many cases of informal requests for delay on the part of defendants or their counsel.

Chapter Six

Conclusions

Delay is a serious problem in North Carolina courts, particularly in the Superior Court criminal division. The extent of delay in bringing cases to trial is sufficiently great in its magnitude both within individual courts and across court jurisdictions in the state to merit consideration of practices and procedures to deal with the delay problem.

Delay as a problem has two perspectives—from the standpoint of the defendant seeking a speedy trial and from concern for the overall efficiency of court operations. It is important that any policy recommendations and legislative action to deal with delay recognize both the rights of individual defendants as well as the desirability of maintaining an efficient court system which can process cases without undue delay or the accumulation of extensive backlogs.

This study has dealt with delay in its accumulative sense, without examining particular cases where injustice has occurred to an individual defendant. Although the rights of individual defendants remain paramount in the judicial system, increasing emphasis is being given in the delay problem to overall consequences in the system.

The finding that as much as forty percent of the criminal cases in North Carolina Superior Courts, during a period of one year, failed to meet reasonable time standards for speed of litigation points to serious consequences, overall, for the North Carolina court system, and individually, for many defendants.

From the standpoint of system efficiency and the undesirable consequences that result from crowded courts, the so-called speedy trial statute, advocated by the Criminal Code Revision Commission, would serve largely as a policy guideline for the courts. The statute would enable judges to order prompt trial and disposal of a case within a period of 30 days in incidences where a defendant has been confined awaiting trial for a period greater than 60 days or in incidences in which a defendant has been awaiting trial on bail for a period greater than 90 days. A defendant may file a petition for prompt trial of his case when he has been confined await-

ing trial for a period of more than 30 days or has been awaiting trial on bail for a period greater than 60 days.

The 90-day period provided for in the proposed North Carolina statute is 11 days shorter than the 101-day model standard of the President's Commission on Crime and Justice. Approximately five percent more cases than the 40 percent reported in this study would be affected by the shorter time period proposed in this statute.

While the statute could serve as a guideline for judges in deciding when to order cases to trial, when no petition has been filed by a defendant, and also could be used administratively by court officials to gauge the amount and extent of delay occurring in the system, it is doubtful that a speedy trial policy alone would do much to speed up the courts or eliminate backlogs, without dealing with other factors which create delay.

If the statute were enacted, more defendants might request prompt trial. However, it is generally known that only a small proportion of defendants desire speedy justice. Judges attempting to enforce the policy would be confronted with the option of dismissing large number of cases unless provisions were made to handle a considerably larger volume of cases in a shorter time period than is now the capability of North Carolina courts.

Several states have provided for automatic dismissal of cases which do not meet the provisions of speedy trial standards. However, the impact of such a provision in North Carolina, as it has been in other states,[1] would be the dismissal of a large volume of cases. Widespread dismissal of cases in order to achieve speedy justice is no more desirable than extensive delay.

Therefore, other measures such as pre-trial discovery procedures, more efficient management of court schedules and court time, and adequate personnel in the court system would have a far greater effect on the speed of litigation and achieve the ends of prompt justice than would a speedy trial statute alone.

The focus of this study has been on court system impact; however the inconvenience to defendants and witnesses and the injustice to individuals who suffer from undue delay should continue as the main rationale for speeding up the process of justice in the courts. No doubt numerous examples could be used to document unwarrented consequences to individuals. A typical case involved

[1] "The Impact of Speedy Trial Provisions: A Tentative Appraisal," *Columbia Journal of Law and Social Problems*, 8, (1972), pp. 356-399.

a defendant who was acquitted of rape on a charge which turned out to be frivolous in the judgment of the jury. The defendant was held in protective custody without bail bond for eight and a half months before the trial commenced on a motion for a speedy trial. Other examples of inconvenience and wasted time for both defendants and witnesses and cases which were not prosecuted because of loss of evidence through delay were encountered in the study.

Such examples and the overall need for efficiency in the court system are justification for both legislative and administrative policy to speed up the process of justice in state courts.

APPENDIX

HOW THIS STUDY WAS CONDUCTED

The data for this study were obtained from two principal sources: (1) from case records of a sample of 2,407 cases which were filed in Superior Courts during the year 1971 and from an analysis of all cases filed prior to 1971 which were still pending in the counties included in the study; and (2) from structured interviews with solicitors in the counties of the study. Both the data collection and interviews were conducted by three advanced law school students who were given special training in data collection and interviewing.

The sample of cases was selected by systematic, scientific procedures to represent the total caseload of 39,138 criminal cases which were filed in State Superior Courts during 1971. In addition, the sample was stratified geographically and by judicial districts to include counties of varying characteristics and so that the cases selected would be a representative sample to each county.

Consequently, the cases analyzed are a representative statewide sample and also a representative sample of 31 individual counties. In addition to being able to make statements about state caseloads, we are also able to draw conclusions about each county included in the study. The sampling, which involved a complex procedure of randomization and stratification, was conducted by the Research Triangle Institute.

The eight metropolitan counties of the state and other urban and rural counties were selected for study. The counties included are:

Metropolitan and Other Counties with Large Increases in Caseloads[1]

Buncombe	Rowan	Mecklenburg	Wake
Cumberland	Forsyth	Orange	Alamance
Durham	Guilford	New Hanover	

[1] All of the States' metropolitan counties, except Cumberland and Durham, were included in the counties with the largest increases in caseloads in the 1971 annual report of the Administrative Office of the Courts. Alamance, Rowan and Orange are the non-metropolitan counties with large increases in caseloads.

Non-metropolitan, Urban Counties

Catawba	Robeson
Edgecombe	Rockingham
Gaston	Union
Iredell	Vance
Lenoir	Wayne
Nash	Burke

Rural Counties

Alleghany	Haywood
Avery	Northampton
Bladen	Surry
Harnett	Washington

A Description of the Cases Analyzed

In the total sample of 2,407 cases, 1,120 or 46.5 percent were offenses which originated for trial in Superior Court. Slightly over half or 53.5 percent were cases appealed for trial de novo from District Courts. The sample data confirm findings in the Annual Report of the Administrative Office of the Courts that over half of the Superior Court caseload consists of misdemeanor cases on appeal. (In 1971, the Administrative Office reports 56.1 percent of the superior Court caseloads consisted of misdemeanors; this is within 2.6 percent of the sampled data). Without exception, cases appealed from District Courts are misdemeanors; a few misdemeanors originate in Superior Courts as companion charges to a felony. The incidence of original misdemeanors, however, was small in the sample.

The types of various offenses included in Superior Court caseloads is shown in Table 1, by major crime offenses. A more detailed breakdown of crime reaching the courts is shown in an appendix where crime is reported by the standard indictment forms utilized in State courts. Assuming the accuracy of sampling, the data should be fairly precise estimates of the amount of each offense in Superior Court caseloads during the year 1971. Generally, one can contend that the sampling percentages should not vary more than four percent, plus or minus, from the actual amount of crime if one were to tabulate all cases filed in 1971.

Table A-1

THE NUMBER AND PERCENT OF OFFENSES IN 1971 SUPERIOR COURT CASELOADS, BY MAJOR CRIME CATEGORIES (ARREST CHARGES)

Offense	Percent	Number of Cases In Sample
Driving Under Influence of Alcohol	16.6%	396
Larceny	11.9	286
Assault	10.4	249
Burglary	10.3	247
Miscellaneous Traffic Offenses	9.7	233
Drug Offenses	9.0	216
Forgery	6.7	161
Offenses Against Public Order & Safety	5.6	135
Obstructing Justice	3.4	82
Robbery	3.2	77
Familial Offenses	2.8	68
Murder/Manslaughter	2.6	58
Liquor Violations	1.9	46
Sex Offenses	1.8	43
Miscellaneous/Regulatory	1.7	52
Fraud	1.1	26
Injury to Real and Personal Property	1.0	25
Kidnapping	0.3	7
Total	100.0	2,407

In the court processing diagram, 22.9 percent or 356 cases underwent a change of charge after reaching court. These are listed as cases where plea bargaining likely occurred. It should be made clear, however, that the extent of the plea bargaining process, as it is currently practiced, cannot be identified precisely from court records. Some incidents of change in charge could result from a determination that a defendant was arraigned on an inappropriate charge; thus not all represent a charge reduction negotiated to obtain concessions from the court or defendant. What can more safely be said is that roughly two-thirds of all cases did not undergo plea bargaining to obtain charge reduction during preliminary examinations. Plea bargaining however is not confined to charge reduction. Often it involves discussions looking toward an agreement under which the accused will enter a plea of guilty in exchange for a favorable sentence recommendation by the solicitor. In many courts, a substantial percentage of guilty pleas

are the product of negotiations between the prosecutor and the defense counsel or the accused. The President's Commission found that in nine states an average of 87.0 percent of cases was disposed of by guilty plea. The number disposed of by guilty plea in North Carolina (based on the sample data) is slightly lower—76.1 percent.

Of all cases scheduled for trial, a total of 915 or 38.0 percent had not gone to trial six and a half months after the end of the year. This includes 14.4 percent which were pending and still awaiting trial. A total of 493 or 20.4 percent, however, had been *nol prossed.* No indictment was returned in 1.2 percent of the cases, and another 2.5 percent was dismissed.

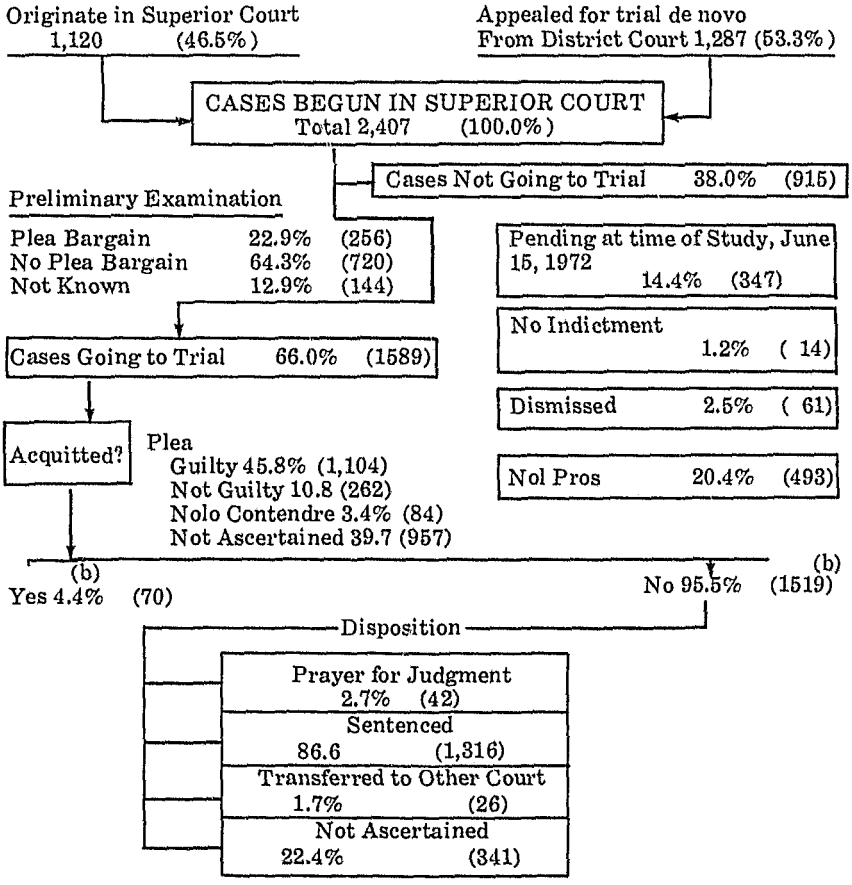
Although there is no comparative data on the extent to which cases are not prosecuted (*nol pros*) in state courts, the failure to prosecute, when it reaches sizeable proportion of caseloads, could well be one of the consequences of congestion and delay. In several incidences, solicitors stated that not prosecuting aging cases, was a practice used to keep caseloads to manageable proportions. The high proportion of cases which did not go to trial, because of not prosecuting, could well be a major indicator of delay and its consequences in North Carolina Superior Courts. Since the *nol pros* results from multiple causes, however, this can be shown only from statement of several solicitors.

Of the 1,589 cases in the sample which went to trial (66 percent of all cases filed), only 4.4 percent resulted in acquittals. The majority of cases which reach trial in Superior Court result in conviction and disposition by sentences or fines.

Table A-2

COURT PROCESSING DIAGRAM

Scientifically Selected Sample of 2,407 Cases Filed in N. C. Superior Courts, During 1971, Including Cases Appealed for Trial de novo From District Courts



(a) Unless otherwise indicated, percentages are based on total number of cases begun in Superior Court.
(b) Based on total number of cases going to trial.
(c) Based on 1,519 convictions.

Table A-3

Percent and Number of Offenses in Samples of 1971 Superior Court Caseload

The following Table gives the percent and number of cases by type of crime in a sample of 2,407 cases selected as a scientific, random sample of the 1971 criminal caseload in North Carolina Superior Courts. Crime is reported as offenses charged during arrest and is grouped into 19 major categories. Under each category, the percent of cases is given according to the offense designated in indictment forms.

The sampling procedure was designed to yield an accuracy of plus or minus four percent. This means that the proportion of offenses should not vary more than four percent or less than four percent from the actual amount of each crime category in the total caseload of 39,138 criminal cases filed in 1971. For example, driving under the influence of alcohol constitutes 16.6 percent of the sample. Assuming the accuracy of sampling procedures, DUI's should not amount to more than 20.6 percent or less than 12.6 percent of the total of 39,138 cases, if the arrest charge of all offenses filed in 1971 were known.

The number of cases in each crime category (and the number in each crime within the crime category) are as follows:

Crime Category	Components	Total	
		%	No.
Assault		10.4	249
	Simple Assault	4.6	110
	Assault w/Deadly Weapon	1.6	38
	Assault w/Intent to Kill	1.0	22
	Assault on Officer	1.0	22
	Assault AWDWIKRI	2.2	52
	Assault Inflicting Harm	0.2	5
Liquor Violations		1.9	46
	Liquor Violation	1.0	25
	Possession of Whiskey	0.8	19
	Making Whiskey	0.008	2
Robbery		3.2	77
	Robbery	1.0	25
	Armed Robbery	2.2	52

Murder/Manslaughter		2.4	58
	First Degree Murder	1.3	32
	Second Degree Murder	0.5	13
	Voluntary Manslaughter	0.2	4
	Involuntary Manslaughter	0.4	9
Sex Offenses		1.8	43
	Sex Offense	0.2	4
	Rape	0.8	18
	Assault w/Intent to Rape	0.5	11
	Aiding Prostitution	0.08	2
	Crimes Against Nature	0.2	4
	Bigamy	———	1
	Incest	0.2	3
Driving Under the Influence	DUI	16.6	396
Other Traffic Offenses		9.7	233
	Reckless Driving	1.5	35
	Collision	0.5	13
	Speeding Over 15	2.1	51
	Speeding Under 15	0.6	14
	Moving Violations	1.7	41
	Improper Quipment	0.1	3
	Illegal Tags	3.2	76
Larceny		11.9	286
	Larceny	9.3	222
	Receiving Stolen Goods	1.1	27
	Larceny of Auto	0.3	7
	Shoplifting	1.3	30
Burglary		10.3	247
	Burglary	0.8	18
	Breaking & Entering	8.6	206
	Possession of Burglary Tools	0.2	5
	Criminal Trespass	0.8	18
Injury to Real and Personal Property		1.0	25
	Injury to Real Property	0.2	4
	Injury to Personal Property	0.5	11
	Arson	0.5	10

Fraud		1.1	26
	Fraud	0.5	6
	Embezzlement	0.5	8
	Larceny by Trick		1
	Filmflam	0.5	8
	Possession of Lottery Ticke Tickets		2
	Gambling		1
Drug Offenses		9.0	216
	Drug Offense	0.5	10
	Possession of Drugs	6.2	148
	Drug Paraphenalia	0.6	13
	Sale of Drugs	1.5	36
	Intent to Sell	0.5	9
Obstructing Justice		3.4	82
	Obstructing Justice	0.2	4
	Perjury	0.2	3
	Escape	0.2	3
	Resisting Arrest	1.2	28
Familial Offenses		2.8	68
	Nonsupport	2.8	68
Offenses Against Public Order/Safety		5.6	135
	Offense against Public Order/Safety	0.9	21
	Riot	———	3
	Concealed Weapon	0.6	15
	Conspiracy	0.4	8
	Public Drunkeness	3.7	88
Forgery		6.7	161
	Forgery	1.0	22
	Bad Checks	2.4	57
	Misuse of Credit Cards	———	1
	Uttering	1.2	28
	Forgery of Checks	2.2	53
Kidnapping		0.3	7
Bribery		———	1

Miscellaneous/Regulatory		1.5	36
	Miscellaneous	1.0	24
	Rgulatory	0.4	10
	Truancy	———	1
	ESC Violation	———	1
GRAND TOTAL		100.0	2392

END